

AMENDED IN SENATE APRIL 16, 2009

AMENDED IN SENATE APRIL 1, 2009

SENATE BILL

No. 388

Introduced by Senator Calderon

February 26, 2009

An act to add Section 66407 to the Education Code, relating to college textbooks.

LEGISLATIVE COUNSEL'S DIGEST

SB 388, as amended, Calderon. Educational materials.

The Donahoe Higher Education Act authorizes the activities of the 4 segments of the postsecondary education system in the state. These segments include the 3 public postsecondary segments: the University of California, which is administered by the Regents of the University of California, the California State University, which is administered by the Trustees of the California State University, and the California Community Colleges, which is administered by the Board of Governors of the California Community Colleges. Private and independent postsecondary educational institutions constitute the other segment.

Existing law urges textbook publishers to take specified actions aimed at reducing the amounts that students pay for textbooks. Existing law requires the Trustees of the California State University and the Board of Governors of the California Community Colleges, and requests the Regents of the University of California, among other things, to work with the academic senates of each respective segment to encourage faculty to give consideration to the least costly practices in assigning textbooks, to encourage faculty to disclose to students how new editions of textbooks are different from previous editions and the cost to students for textbooks selected, to review procedures for faculty to inform college

and university bookstores of textbook selections, and to encourage faculty to work closely with publishers and college and university bookstores in creating bundles and packages that are economically sound.

Existing law expresses the intent of the Legislature to encourage private colleges and universities to work with their respective academic senates, and to encourage faculty to consider practices in selecting textbooks that will result in the lowest costs to students.

Existing law requires textbook publishers, for textbooks published on or after January 1, 2010, to print a summary of the substantive content differences between the new edition and any prior addition on, or within, the cover of the textbook, as well as the copyright date of the previous edition.

Existing law prohibits those responsible for choosing course materials and adopting textbooks at an institution of higher education from demanding or receiving anything of value for adopting specific course materials required for coursework instruction.

This bill would require any publisher of college textbooks who provides any information regarding college textbooks or supplemental materials, as defined, to disclose in writing to any faculty member or entity charged with selecting textbooks the amount that the textbook would be made available to the campus bookstore. The bill would require the publisher to make the textbook available at that price for *at least* 6 months and would require the publisher to inform the institution 45 days in advance of any price increase. The bill would require the publisher to inform the institution of previous editions and the substantial content revisions made from the previous edition. The bill would also require a publisher to provide bundled textbooks and supplemental material separately.

This bill would allow an action for an injunction to be brought against a publisher in superior court for violating these provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 66407 is added to the Education Code,
- 2 to read:
- 3 66407. (a) This section shall be known and may be cited as
- 4 the Accountability in College Textbook Publishing Practices Act.

1 (b) It is the intent of the Legislature that every student seeking
2 a higher education in the state is offered affordable access to course
3 materials and to do all of the following:

4 (1) To encourage textbook publishers and distributors to work
5 with faculty to promote understanding of the cost to students of
6 purchasing faculty selected textbooks, including the disclosure of
7 prices and bundling practices.

8 (2) To encourage innovation in the development and use of
9 course materials, including open textbooks and other open
10 educational resources, that can help students receive the full value
11 of their educational investment without excessive cost.

12 (3) To ensure that faculty members are informed of accurate
13 and relevant pricing information for course materials and that
14 students are protected as a consumer group.

15 (4) To strengthen and enforce existing federal regulations.

16 (c) As used in this section, the following terms have the
17 following meanings:

18 (1) “College textbook” means a textbook or set of textbooks
19 used for, or in conjunction with, a course at an institution of higher
20 education.

21 (2) “Supplemental material” means educational material
22 developed to accompany a college textbook, which may include
23 printed materials, computer disks, Internet Web site access, and
24 electronically distributed materials.

25 (3) “Bundle” means one or more college textbooks or other
26 supplemental learning materials that may be packaged together to
27 be sold as course material for one price.

28 (4) “Custom textbook” means a college textbook that is
29 compiled by a publisher at the direction of a faculty member or
30 other person or adopting entity in charge of selecting course
31 materials at an institution of higher education and may include,
32 alone or in combination, items such as selections from original
33 instructor materials, previously copyrighted publisher materials,
34 copyrighted third-party works, and elements unique to a specific
35 institution, such as commemorative editions.

36 (5) “Integrated textbook” means a college textbook that is
37 combined with supplemental materials developed by a third party
38 that, by third-party contractual agreement, may not be offered by
39 publishers separately from the college textbook with which the
40 supplement materials are combined. “Integrated textbook” also

1 means a textbook that is combined with supplemental materials
2 that are so interrelated with the content of the textbook that the
3 separation of the textbook from the supplemental materials would
4 render the textbook unusable for its intended purpose.

5 (6) “Substantial content” means parts of a college textbook,
6 such as new chapters, additional eras of time, new themes, or new
7 subject matter.

8 (7) “Publisher” means a publisher of college textbooks or
9 supplemental materials that markets college textbooks or
10 supplemental materials to faculty members at institutions of higher
11 education.

12 (8) “Campus bookstore” means the bookstore on the campus
13 of, or otherwise associated with, an institution of higher education.

14 (9) For purposes of this section, “writing” includes electronic
15 communications.

16 (d) If a publisher provides a faculty member or entity in charge
17 of selecting course materials at an institution of higher education
18 with information regarding a college textbook or supplemental
19 material, the publisher shall include all of the following
20 information, in writing, in its communication:

21 (1) The price at which the publisher would make the college
22 textbook or supplemental material available to the institution’s
23 campus bookstore.

24 (2) The copyright dates of the three previous editions of the
25 college textbook in the preceding 10 years, if any.

26 (3) The substantial content revisions made between the current
27 edition of the college textbook or supplemental material and the
28 previous edition, if any.

29 (4) Whether the college textbook or supplemental material is
30 available in any other format, including paperback or unbound,
31 and the price at which the publisher would make the college
32 textbook or supplemental material in the other format available to
33 the institution’s campus bookstore.

34 (e) If a publisher provides a faculty member or entity in charge
35 of selecting course materials at an institution of higher education
36 with the price at which the publisher would make the college
37 textbook or supplemental material available to the institution’s
38 campus bookstore as required by this section, the publisher shall
39 do both of the following:

1 (1) Make the college textbook or supplemental material available
2 to that institution's campus bookstore at or below the price
3 ~~provided~~ *for at least six months*.

4 (2) Notify the faculty member or entity in charge of selecting
5 course materials, and the campus bookstore, in writing, of any
6 increase in the price of the textbook or supplemental material,
7 including the amount of the increase, at least 45 days in advance
8 of the increase.

9 (f) A publisher that sells a college textbook and any
10 supplemental material as a bundle or as an integrated textbook
11 shall also make the college textbook and each item of supplemental
12 material available, as separate and unbundled items at separate
13 prices, except that this subdivision does not apply to integrated
14 textbooks.

15 (g) If a faculty member or entity in charge of selecting course
16 materials at an institution of higher education directs a publisher
17 to compile a custom textbook, the publisher shall provide, in
18 writing, prior to accepting an order for the custom textbook, the
19 price at which the publisher would make the custom textbook
20 available to the campus bookstore.

21 (h) Any publisher violating any of the provisions of this section
22 may be enjoined by any superior court of competent jurisdiction
23 upon action for injunction, and the superior court shall, after proof
24 of violation, issue an injunction or other appropriate order
25 restraining the publishers conduct.